

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
: :
Gypsy Sally's Acoustic :
Tavern, LLC, t/a : Protest
Gypsy Sally's : Hearing
3401 K Street NW : (Status)
Retailer CT :
License No. 90582 :
Substantial Change App :
(284 to 452 seats) :
Case No. 14-PRO-00052 :
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SEPTEMBER 17, 2014

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HECTOR RODRIGUEZ, Member

ALSO PRESENT:

THOMAS BIRCH, ANC 2E

P R O C E E D I N G S

09:47 a.m.

CHAIR MILLER: Good morning everyone. Welcome to the regularly scheduled meeting of the District of Columbia Alcoholic Beverage Control Board. Today is September 17, 2014. My name is Ruthanne Miller. I am the chairperson. Joining me to my far right is Donald Brooks.

Next to Mr. Brooks is Mr. Nick Alberti and next to Mr. Alberti is Mr. Hector Rodriguez. We have four members in attendance of business this morning and three constitute a forum. Copies of today's hearing calendar and agenda are available at the receptionist's desk. Please be aware that these proceedings are being recorded by a court reporter. Accordingly, we ask that you refrain from any disruptive noises or actions in the hearing room. If you have any electronic devices, pagers, cell phones and such, please make certain that they are turned off to avoid any

1 interruption of the proceedings.

2 When I call your case, please come
3 forward and take a seat at the table. You
4 will notice that there is a piece of paper on
5 each table for you to sign in. This is to
6 ensure the correct spelling of your name for
7 the record. The Open Meetings Act requires
8 that the public hearing in each case be open
9 to the public although we may, consistent with
10 section 405B of the Open Meetings Act, enter
11 a closed meeting during or after the public
12 hearing on a case, to consult with an attorney
13 to obtain legal advice, discuss settlement
14 agreements, or deliberate upon a decision in
15 an adjudication proceeding.

16 So that concludes my introductory
17 remarks and I'm going to call the first case
18 of the morning and that is Case No. 14-PRO-
19 00052, Gypsy Sally's located at 3401 K Street
20 NW, License No. 90582 and ANC 2E. So if you
21 all would come forward on that case. So when
22 you're ready, if you could sign in and then

1 introduce yourselves for the record.

2 MR. BIRCH: Thank you. Good
3 morning. My name is Thomas Birch, that's B-I-
4 R-C-H, representing ANC 2E.

5 MS. ENSOR: My name is Karen
6 Ensor, E-N-S-O-R, and I am a member of Gypsy
7 Sally's.

8 CHAIR MILLER: Okay. Is anybody
9 here from CAG Citizens Association?

10 MR. BIRCH: No, but the ANC is
11 working with CAG on this case. We're in
12 agreement with all that has transpired so far.

13 CHAIR MILLER: So are you
14 basically here for both of them?

15 MR. BIRCH: I could say that I am
16 here for both. The CAG representative
17 actually fell and injured herself.

18 CHAIR MILLER: Okay.

19 MR. BIRCH: -- yesterday and told
20 me she wouldn't be able to be here today. I
21 don't expect her to be here anyway.

22 CHAIR MILLER: Okay.

1 MR. BIRCH: I'm sorry.

2 CHAIR MILLER: Okay. Sometimes we
3 dismiss when the party doesn't show the
4 status, but I don't know that that's necessary
5 in this case. Do you have -

6 MR. BIRCH: Did the CAG call us?
7 Did the CAG representative call us and let us
8 know -

9 MEMBER ALBERTI: I don't believe
10 so.

11 MR. BIRCH: -- he or she would not
12 be in attendance? Well Madam Chairman, I
13 recommend that we just follow the normal
14 procedure because I think we need to be, treat
15 everyone the same. We can dismiss CAG and
16 then the representative can inform us as to
17 the reason for, is it her, her -

18 MEMBER ALBERTI: Yes.

19 MR. BIRCH: -- her absence and if
20 we find that it's just cause to reinstate CAG
21 then we will do that, but I think that we
22 can't treat them any different than we treat

1 anyone else. They don't have a designated
2 representative here and that's been our policy
3 and I just think that we, it may seem unfair,
4 but we have to treat everyone the same.

5 MR. BIRCH: I understand.

6 CHAIR MILLER: So Mr. Birch, you
7 can't say that you -

8 MR. BIRCH: No.

9 CHAIR MILLER: -- you're
10 designated to represent

11 MR. BIRCH: -- I cannot.

12 CHAIR MILLER: Okay.

13 MR. BIRCH: I'm not an official
14 representative.

15 CHAIR MILLER: All right. Ms.
16 Ensor, do you have anything that you want to
17 add to that?

18 MS. ENSOR: I'm just sorry she
19 fell.

20 CHAIR MILLER: What?

21 MS. ENSOR: I'm sorry if she fell
22 though.

1 CHAIR MILLER: But you said that
2 she fell when?

3 MR. BIRCH: She fell on the way
4 here to a role call hearing two days ago.

5 CHAIR MILLER: Two days ago, okay.
6 Okay. Well, that could be good cause for a
7 failure to appear at a status.

8 MEMBER ALBERTI: Yeah, but she
9 needs to tell us.

10 MR. BIRCH: Yeah.

11 MEMBER ALBERTI: I need to hear
12 her say it. I just, you know, I have hearsay.

13 MR. BIRCH: I will inform her -

14 MEMBER ALBERTI: It's not that I
15 don't trust you, but I think, you know, I
16 think we need to have some order here where
17 everyone's treated the same and I'd like to
18 hear it from her then we'll have something in
19 the record and then the applicant can't later
20 come by and say hey, you know, you guys
21 treated this case wrong. I'm not saying you
22 would, but this does happen. This does happen

1 to us.

2 CHAIR MILLER: Okay. So the rule
3 is 1603.3, failure to appear in person or
4 through a designated representative may result
5 in denial of the license application or
6 dismissal of the protest unless in the
7 discretion of the board good cause is shown
8 for failure to appear. This is under the
9 status hearing category and a request for
10 reinstatement with the board must be filed
11 within ten days of the dismissal or denial
12 date. Okay. Are you making a motion that --

13 MEMBER ALBERTI: I move to, you
14 know, again, you know, if Ms. Moore has fallen
15 and is seriously injured then she has my
16 sympathies, but I think that we need to, I
17 will move to dismiss this until we hear from
18 her.

19 MR. BIRCH: Okay.

20 CHAIR MILLER: Okay. Is there a
21 second?

22 MEMBER RODRIGUEZ: I second that

1 motion.

2 CHAIR MILLER: Okay. Any further
3 comment on that? Then all those in favor say
4 aye.

5 GROUP: Aye.

6 CHAIR MILLER: Those opposed? All
7 those sustaining? Motion passes 4-0-0. And
8 Ms. Cruz and CAG will have the opportunity to
9 file or request for reinstatement with the
10 board indicating the cause for the failure to
11 appear.

12 MR. BIRCH: All right.

13 CHAIR MILLER: Okay.

14 MR. BIRCH: I'll inform her of
15 that.

16 CHAIR MILLER: Okay. And she will
17 get a written order from us and then she'll
18 have ten days to respond. Okay. Okay, so
19 moving on. Are there any other issues to
20 bring to our attention?

21 MR. BIRCH: On this case?

22 CHAIR MILLER: On this case, yeah

1 this case.

2 MR. BIRCH: What I can report is
3 that we are -

4 CHAIR MILLER: Of course, yeah.

5 MR. BIRCH: -- within inches of
6 reaching a final settlement agreement.

7 CHAIR MILLER: Right, okay.

8 MR. BIRCH: Which I hope on behalf
9 of ANC 2E that we will approve and adopt at
10 our regularly scheduled public meeting next
11 Monday, September 29th.

12 CHAIR MILLER: Okay, great.

13 MR. BIRCH: We have had good
14 negotiations with the applicant on the
15 outstanding issues in this case and CAG has
16 also been a party of -

17 MEMBER ALBERTI: So --

18 CHAIR MILLER: You're close to a
19 settlement agreement?

20 MR. BIRCH: Yes.

21 CHAIR MILLER: Is that what you,
22 okay.

1 MR. BIRCH: We bring you good
2 news.

3 CHAIR MILLER: That's great.
4 Okay. Anything else you want to ask? Okay.
5 So since you don't have a settlement agreement
6 yet --

7 MR. BIRCH: No.

8 CHAIR MILLER: -- I'm just gonna
9 give you the instructions for the protest
10 hearing in case you go to protest. Very
11 briefly, I just want to bring your attention
12 to the fact that you will be receiving in the
13 mail before the protest hearing a protest
14 information form and an exhibit form and you
15 need to file those forms with the board and
16 serve on the opposing party the information
17 requested therein, which is the issues and the
18 PIF and the witnesses that you were gonna have
19 and then a list of exhibits and the exhibits
20 thereto. If you don't file the PIF, the case
21 can be dismissed. And if you don't file the
22 exhibit form and exhibits, the exhibits might

1 not be accepted into evidence. But we would
2 decide at the hearing whether there was good
3 cause, whether there's no prejudice, etcetera.
4 But those forms are really important if you go
5 to a protest hearing.

6 MR. BIRCH: Okay.

7 CHAIR MILLER: They're really
8 important, they narrow the issues and they
9 make for a more efficient hearing. And these
10 hearings don't go on surprises, they really go
11 on addressing the issues. So that's all I
12 want to say. You can contact Ms. Jenkins if
13 you have any questions, you know, before
14 things are resolved. Okay. Any other
15 questions?

16 MR. BIRCH: I guess not.

17 CHAIR MILLER: Okay. Well, thank
18 you.

19 MR. BIRCH: Thank you very much.

20 CHAIR MILLER: Have a good meeting
21 on Monday.

22 UNKNOWN MALE: You're dismissed.

1 Please tell Ms. Moore we wish her well.

2 (Whereupon the hearing was
3 concluded at 09:56 a.m.)
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